

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 1 OF 2003

Shri Ramdas Hari Naik,
resident of Dharbandora,
near Gram Panchayat of
Dharbandora, Sanguem-Goa.

... Applicant.

versus

S T A T E
(through Public Prosecutor).

... Respondent.

Mr. Shivan Dessai, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 13TH JUNE, 2003.

ORAL JUDGMENT

The Applicant/Accused who stands convicted for an offence punishable under Sections 279 and 338 of the Indian Penal Code by the Judicial Magistrate, First Class, Panaji, by Judgment dated 22nd August, 1997, confirmed in Criminal Appeal No.35 of 1997 by the Additional Sessions Judge (II) at Panaji, dated 26th December, 2002, has assailed the concurrent findings of fact arrived by the two Courts below. The Applicant/Accused has been convicted as aforesaid and sentenced by the learned Judicial Magistrate, First Class, Panaji, to undergo Rigorous Imprisonment

for 3 months and fine of Rs.1000/- in default Simple Imprisonment for 15 days for an offence punishable under Section 279 of the Indian Penal Code and Rigorous Imprisonment for 6 months and to pay fine of Rs.1000/- in default Simple Imprisonment for 1 month for an offence punishable under Section 338 of the Indian Penal Code. The learned Judicial Magistrate, First Class, Panaji, had directed that both these sentences shall run consecutively and had also directed that the fine if recovered shall be paid as compensation to the two injured witnesses. The learned lower appellate Court dismissed the Appeal but modified the sentence to run concurrently.

2. The facts necessary for the decision of this Revision can be briefly stated as under:-

The Applicant/Accused who was driving a truck bearing No.GA-02-T-6230 was proceeding towards Miramar and when the truck reached near the Campal Ganesh junction, the truck suddenly swerved towards the right side and dashed a kinetic scooter bearing No.2675, which was coming from the opposite direction and was driven by P.W.5, Fatima Mendes, with P.W.1, Anthony Mendes, as the pillion rider. Both P.W.1, Anthony Mendes and P.W.5, Fatima Mendes received injuries and as a result of the injuries the leg of

P.W.5, Fatima Mendes, had been amputated. After dashing the kinetic scooter, the truck proceeded further and dashed against a fiat car in which P.W.2, M. D. Phal and P.W.6, Meena Fall were travelling. As a result of the dash, the front portion of the car was damaged and P.W.6, Meena Fall received minor injuries.

3. Against the backdrop of the facts stated above, Mr. Shivan Dessai, learned Counsel who has very ably argued on behalf of the Applicant has urged before me that the accident resulted because the Applicant/Accused in order to avoid dashing against the mini bus was required suddenly to swerve his vehicle towards the right side. To fortify the submission, learned Counsel for the Applicant has placed reliance on the testimony of P.W.4, Dhauru Naik, who was travelling in the said truck.

4. P.W.4, Dhauru Naik, states that one bus was proceeding ahead of the bus and it stopped suddenly near the junction due to which the Applicant/Accused took the truck towards his right side to avoid dashing the bus. This is the defence which is also set up by the Applicant/Accused in his Statement under Section 313.

5. Mr. Shivan Dessai, learned Counsel for the Applicant has placed reliance on a Judgment of this Court in the matter of **State of Goa v. Vaman Rama Salgaonkar** reported in 2001(1) GLT 172. According to Mr. Dessai, learned Counsel for the Applicant, the facts in the reported decision and the facts of the case at hand are identical and, therefore, the Judgment of this Court would apply with full vigour to the present revision. A reference may usefully be made to the facts of the cited decision. In the reported decision, the accident had occurred as a rickshaw which was ahead of the Kadamba bus which was driven by the Applicant/Accused therein stopped suddenly as a result of which the driver of the Kadamba bus swerved towards the right side. In the said reported Judgment on behalf of the Accused one defence witness had been examined who was the conductor travelling in the said Kadamba bus. The said defence had stated that the distance between the said passenger rickshaw and the Kadamba bus was about 3 metres when the rickshaw suddenly stopped and thus to avoid giving a dash to the rickshaw the driver had applied his brakes and in the process their vehicle went to the right side i.e. to the opposite side. The evidence of the defence witness in the aforesaid Judgement also highlights the fact that there were

vehicles in front of the rickshaw and vehicles behind the Kadamba bus.

6. This Judgment of this Court was cited before the learned lower appellate Court and the learned lower appellate Court has distinguished the Judgment. Be that as it may, according to me, this Judgment can be distinguished. In the present case, there is no evidence whatsoever in respect of the distance between the truck driven by the Applicant/Accused and the mini bus. This is of vital importance as this evidence would have fortified the evidence. The defence of the Applicant/Accused is that he was required to swerve suddenly towards the right side in order to avoid collision. In the absence of the evidence in respect between the truck and the mini bus, according to me, the benefit of this Judgment cannot be extended to the Applicant/Accused.

7. This is a Criminal Revision Application. The two Courts below have held the Applicant/Accused guilty and re-appreciation of the evidence is not permissible. According to me, there is no illegality committed by the two Courts below in the appreciation of the evidence and, therefore, no interference in the finding of conviction is called for in this revision.

8. Mr. Shivan Dessai, learned Counsel for the Applicant/Accused stated that the Accused is facing the trial since 1995. He is the sole bread earner in the family with two children and a wife to support. The employment of his wife is not permanent and she is employed on temporary basis. Therefore, the fervent plea for reduction in the sentence.

9. In the peculiar facts and circumstances of the case, according to me, since the offence is of the year 1995 and the Applicant/Accused is the sole bread earner of the family which consists of his wife and two minor children, some leniency deserves to be shown to the Applicant/Accused. According to me, reduction of sentence from 6 months to a sentence of 1 month and enhancement of the fine from Rs.1000/- on each count to Rs.2000/- on each count would meet the ends of justice. Accordingly, the sentence as aforesaid is altered and the conviction of the Applicant/Accused for the offences punishable under Sections 279 and 338 of the Indian Penal Code is maintained and the sentence from 3 months Rigorous Imprisonment and fine of Rs.1000/- and 6 months Rigorous Imprisonment and fine of Rs.1000/- is reduced to 1 month Rigorous Imprisonment on each count and fine of Rs.2000/- on each count. The substantive sentences shall run concurrently. Fine if paid by the Applicant/Accused

shall be given to the injured witnesses as compensation under Section 357 of the Code of Criminal Procedure. One month time is granted to surrender the Applicant/Accused. Bail bonds stand cancelled.

10. With the above modification, the Revision stands partly allowed.

P. V. HARDAS, J.

RD.